



[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[NRC-2014-0062]

### Special Nuclear Material Doorway Monitors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a revised regulatory guide, (RG) 5.27, Revision 1, “Special Nuclear Material Doorway Monitors.” This guidance addresses NRC requirements that individuals must be searched as they leave a material access area (MAA) for facilities that contain special nuclear material (SNM) of a type and quantity that require an MAA.

**ADDRESSES:** Please refer to Docket ID **NRC-2014-0062** when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0062**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- **NRC's Agencywide Documents Access and Management System (ADAMS):**  
You may access publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for

each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of Regulatory Guide 5.27 is available in ADAMS under Accession No. ML14290A268. The regulatory analysis may be found in ADAMS under Accession No. ML12237A124.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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**FOR FURTHER INFORMATION CONTACT:** Al Tardiff, Office of Nuclear Security and Incident Response, telephone: 301-415-7015, e-mail: [Al.Tardiff@nrc.gov](mailto:Al.Tardiff@nrc.gov) or, Richard Jervey, Office of Nuclear Regulatory Research, telephone: telephone: 301-251-7404, e-mail: [Richard.Jerve@nrc.gov](mailto:Richard.Jerve@nrc.gov), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

The NRC is issuing a new guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Regulatory Guide 5.27, Revision 1 was issued for comment as Draft Regulatory Guide (DG) 5038. The NRC developed this regulatory guide to describe a method that the NRC staff considers acceptable to implement the search requirement for concealed SNM applied to

personnel exiting a material access area MAA. For holders of a reactor license under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) (Ref.1), “Domestic Licensing of Production and Utilization Facilities,” a combined license under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” or a fuel cycle facility license under 10 CFR part 76, “Certification of Gaseous Diffusion Plants,” having the need to possess or use SNM within their facility, the NRC typically has included in their license a condition granting a general license to use SNM under 10 CFR part 70, “Domestic Licensing of Special Nuclear Material.” The RG applies to facilities that contain SNM of a type and quantity to require an MAA. An MAA is any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which each constitute a physical barrier.

This RG is being revised because it was out-of-date with current, related guidance and references in the CFR. Related specifications and standards for SNM monitors and metal detectors have been updated or developed since the previous revision was issued in 1974. This revision has been developed to provide detection practices and criteria that licensees may use to meet NRC regulations in 10 CFR part 73 and to augment programmatic information within the general reference, NUREG-1964, “Access Control Systems: Technical Information for NRC Licensees,” issued in April of 2011. NUREG-1964 may be found in ADAMS under Accession No. ML1115A078.

## **II. Additional Information**

DG-5038 was published in the *Federal Register* on March 26, 2014, (79 FR 16832) for a 30 day public comment period. The public comment period closed on April 25, 2014. Public comments on DG-5038 and the staff responses to the public comments are available at ADAMS Accession Number ML14288A653.

### **III. Congressional Review Act**

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

### **IV. Backfitting and Issue Finality**

This RG applies to applicants for, and current and future holders of special nuclear material licenses under 10 CFR part 70, and operating licenses under part 50, combined licenses under part 52, and certificates of compliance or approvals of a compliance plan for gaseous diffusion plants under part 76 if they are also applicants for, or holders of, special nuclear material licenses under part 70. Issuance of this RG does not constitute backfitting under 10 CFR parts 50, 70, or 76, and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the “Implementation” section of the RG, the NRC has no current intention to impose this RG on holders of part 50 operating licenses, part 52 combined licenses, part 70 licensees, or part 76 certificates of compliance. Moreover, the guidance in the RG addresses security issues, which are matters separate from the technical requirements to operate a facility covered by backfitting and issue finality provisions.

The NRC has determined that the backfit provisions in § 50.109 do not apply to non-power reactor licensees because the rulemaking record for § 50.109 indicates that the Commission likely intended to apply this provision to only power reactors, and NRC practice has been consistent with this rulemaking record. The part 52 issue finality provisions do not apply to non-power reactors because part 52 does not apply to non-power reactors.

This RG could be applied to applications for part 50 operating licenses, part 52 combined licenses, part 70 licenses, and part 76 certificates of compliance docketed by the

NRC as of the date of issuance of the RG, as well as future such applications submitted after the issuance of the RG. Such action would not constitute backfitting as defined in 10 CFR 50.109, 70.76, or 76.76, or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by 10 CFR 50.109, 70.76, and 76.76, or the relevant issue finality provisions in part 52. Backfitting restrictions were not intended to apply to every NRC action that substantially changes settled expectations, and applicants have no reasonable expectation that future requirements may change, see 54 FR 15372 (April 18, 1989), at 15385-86. Although the issue finality provisions in part 52 are intended to provide regulatory stability and issue finality, the matters addressed in this RG (concerning certain security requirements in part 73) are not within the scope of issues that may be resolved for design certification, design approval or a manufacturing license, and therefore are not subject to issue finality protections in part 52.

Dated at Rockville, Maryland, this 23<sup>rd</sup> day of July 2015.

For the Nuclear Regulatory Commission.

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[FR Doc. 2015-19445 Filed: 8/6/2015 08:45 am;  
Publication Date: 8/7/2015]